

Application No. 10/749,368
Amendment dated October 12, 2005
Reply to Office Action of July 12, 2005

REMARKS

Claims 1–64 are presented for Examiner Hill's consideration.

Claims 1, 22, 43 and 64 have been amended to further clarify that the front ear portion comprises a fastener adapted to engage into the elastic inner layer in the back waist region and the back ear portion comprises a fastener adapted to engage into the outer layer in the front waist region. Support for these amendments can be found at least at page 21, lines 9–27. No new matter has been added.

The Examiner has objected to claim 1 because "the opening location is unclear by the language of an 'opening located in an internal position to the elastic inner layer perimeter'." Claims 1, 22, 43 and 64 have been amended by deleting the words "located in an internal position to the elastic inner layer perimeter" to clarify that the opening need only be defined by the elastic inner layer. Support for these amendments can found at least at page 12, line 15.

The Examiner has interpreted several terms and phrases as discussed in greater detail below. Applicants have directed the Examiner to relevant sections of the specification and request that these terms and phrases be construed in accord with the guidance provided by the Federal Circuit in Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005).

The Examiner has interpreted the term 'outer layer' of claim 1, line 7, "to not have to be exclusively include an elastic or absorbent material." Applicants are unsure as to what the Examiner means by "absorbent material" as it may relate to the outer layer, but direct the Examiner's attention to the specification at page 10, line 16, through page 11, line 29, wherein the outer layer 80 is described in detail. Specifically, the specification at page 10, lines 16–18, states that, "the outer layer 80 (visible in Fig. 2) **may** be formed of a stretchable material such that the outer layer 80 is extensible or elastic." (emphasis added).

The Examiner has interpreted the term 'inner surface' of the outer layer in claim 1, line 7, to "be either the body-facing or garment-side layer." Additionally, the Examiner interpreted the term 'outer surface' of the outer layer to "be either the body-facing or

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garment-side layer." Applicants invite the Examiner to carefully distinguish between the term "layer" and the term "surface". A given "layer" has two major "surfaces". Applicants direct the Examiner's attention to the specification at page 5, lines 15–19, which states, "the outer layer and the elastic inner layer are generally planar and both may have an inner surface and an outer surface. When the garments are worn, the inner surfaces are the surfaces that are in closest proximity to the skin of the wearer. The outer surfaces are in closest proximity to the clothing of the wearer." Therefore, the 'inner surface' of the outer layer is the surface of the outer layer that is in closest proximity to the skin of the wearer as opposed to the outer surface of the outer layer which is the surface of the outer layer that is in closest proximity to the clothing of the wearer.

The Examiner has interpreted the term 'elastic inner layer perimeter' of claim 1 to "be the outermost perimeter around the elastic inner layer." The specification at page 5, lines 13–14, states that "the elastic inner layer perimeter is defined by the outer edges or boundaries of the elastic inner layer material." The specification at page 12, lines 16–17, states that "the elastic inner layer perimeter 25 generally corresponds to the border defined by the elastic inner layer 20."

The Examiner has interpreted the term 'opening located in an internal position to the elastic inner layer perimeter' of claim 1 "to mean that the opening can be located in any position relative to the elastic inner layer perimeter." The specification at page 12, lines 15–16, states that "the elastic inner layer 20 may define an opening 90 where the opening 90 may be located in an internal position to the perimeter 25 of the elastic inner layer 20."

The Examiner has interpreted the term 'fastener' of claim 1 to "include any element that has a surface and/or structure capable of securing multiple components together." Applicants have amended claims 1, 22, 43 and 64 to clarify that the disposable garment has one 'fastener' in the front waist region that is adapted to engage into the elastic inner layer 20 in the back waist region and one 'fastener' in the back waist region that is adapted to engage into the outer layer 80 in the front waist region. This amendment renders the Examiner's interpretation moot.

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The Examiner has interpreted the terms 'extensible' and 'elastic'. The specification at page 5, lines 26–27, states that "extensible materials are generally understood to be stretchable but not capable of returning to substantially their original length after a pulling force is removed. The specification at page 5, lines 28–30, states that, "elastic materials are generally understood to be those materials that are stretchable and that are capable of returning to substantially their original length when a pulling force is removed."

The Examiner has interpreted the phrase 'the outer layer is liquid permeable' of claim 6 to "include a layer having the capability of absorbing any amount of liquid at room temperature." The specification at page 5, lines 30–32, states that "the outer layer may be liquid impermeable or liquid permeable. When the outer layer is liquid impermeable, the outer layer may act as a barrier." Therefore, when the outer layer is liquid permeable, the outer layer does not act as a barrier to liquid. It is not clear what, if anything, 'absorbency' has to do with liquid permeability.

The Examiner has interpreted the term 'pleats' of claim 7 to "be a fold or any other change in the element surface, which provides a raised or indented portion." The specification at page 16, lines 13–16, states that "an example of an outer layer 80 having a three-dimensional shape is to provide an outer layer 80 that has one or more pleats. The pleats permit an outer layer 80 having a length that is greater than the length of an attached elastic inner layer 20 in the cross-direction of the garment 100." Figures 5, 6 and 8 illustrate exemplary pleats.

The Examiner has interpreted the term 'ear portions' of claim 43, lines 28–31, as "being any areas that include the fastening element." The specification at page 21, lines 11–15, states that "the material forming the mechanical fasteners 130 and 140 may be integral with the elastic inner layer 20 and the outer layer 80, or the material may be provided on separate portions (e.g. a front ear portion 33 and a back ear portion 43, both shown in Fig. 2) that are attached to the longitudinal side edges 55 of the garments 100 in the waist regions.

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Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and remarks and the following arguments is respectfully requested.

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ARGUMENTS

By way of the Office Action mailed 07/12/2005, claims 1–6, 8–11, 14–15, 21, 43–48, 50–53 and 56–57 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 4,990,147 to Freeland (hereinafter *Freeland*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Also, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed. Cir. 1989)).

Freeland fails to teach each and every element, either expressly or inherently, as set forth in presently amended claim 1 and therefore the rejection as to this claim should be withdrawn.

Freeland discloses a disposable absorbent article having tapes 42 disposed at the back of the backsheet 14 (col. 2: ll. 59–61) unlike presently amended claim 1 that requires the outer surface of the outer layer in the front waist region to include a fastener located laterally inward of each longitudinal side edge and be adapted to engage into the elastic inner layer in the back waist region. *Freeland* fails to teach this element and therefore does not anticipate Applicants' claim 1 and this rejection should be withdrawn.

Claims 2–6, 8–11, 14–15, and 21 depend from claim 1 and are patentably distinct over *Freeland* for at least the same reason as claim 1 discussed above. Therefore, the rejections as to these claims should be withdrawn.

Freeland fails to teach each and every element, either expressly or inherently, as set forth in the presently amended claim 43 and therefore the rejection as to this claim should be withdrawn.

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Applicants' claim 43 requires, in part, a front ear portion bonded to each longitudinal side edge in the front waist region, wherein the front ear portion has an elastic inner layer surface and an outer layer surface, and wherein the front ear portion comprises a fastener on the outer layer surface, the fastener adapted to engage into the elastic inner layer in the back waist region; and a back ear portion bonded to each longitudinal side edge in the back waist region, wherein the back ear portion has an elastic inner layer surface and an outer layer surface, and wherein the back ear portion comprises a fastener on the elastic inner layer surface, the fastener adapted to engage into the outer layer in the front waist region.

Freeland fails to teach a front ear portion bonded to each longitudinal side edge in the front waist region. *Freeland* fails to teach a front ear portion comprising a fastener adapted to engage into the elastic inner layer in the back waist region. *Freeland* fails to teach a back ear portion bonded to each longitudinal side edge in the back waist region. For at least these reasons, *Freeland* fails to anticipate Applicants' claim 43 and this rejection should be withdrawn.

Claims 44-48, 50-53 and 56-57 depend from claim 43 and are patentably distinct over *Freeland* for at least the same reasons as claim 43 discussed above. Therefore, the rejections as to these claims should be withdrawn.

By way of the Office Action mailed 07/12/2005, claims 1, 3, 12 and 54 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 6,129,720 to *Blenke et al.* (hereinafter *Blenke*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Blenke fails to teach each and every element, either expressly or inherently, as set forth in Applicants' presently amended claims 1 and 43 and therefore the rejection as to these claims should be withdrawn.

Blenke states that fastening tabs 20, 22 can comprise hook fasteners for securing rear portion 14 of the absorbent article 8 to looped material at front portion 10. (col. 6, ll. 52-54). However, *Blenke* does not teach that the outer surface of the outer layer in the

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front waist region includes a fastener adapted to engage into the elastic inner layer in the back waist region as required by Applicants' currently presented claims 1 and 43. For at least this reason, *Blenke* fails to anticipate Applicants' claims 1 and 43 and this rejection should be withdrawn.

Claims 3, 12 and 54 depend from claims 1 and 43 and are patentably distinct over *Blenke* for at least the same reason as claims 1 and 43 discussed above. Therefore, the rejections as to these claims should be withdrawn.

By way of the Office Action mailed 07/12/2005, claims 13, 16–20, 55 and 58–64 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 4,990,147 to Freeland (*Freeland*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

As discussed above, *Freeland* fails to teach or suggest all the claim limitations of Applicants' currently amended claims 1, and 43. Specifically, *Freeland* fails to teach or suggest a fastener in the front waist region adapted to engage into the elastic inner layer in the back waist region. Claims 13, 16–20, 55 and 58–63 depend from claims 1 and 43 and are patentably distinct over *Freeland* for at least the same reason as claims 1 and 43 as discussed above. Therefore, the rejection of these claims should be withdrawn.

By way of the Office Action mailed 07/12/2005, claims 22–27 and 29–42 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 4,990,147 to Freeland (*Freeland*) in view of U.S. Patent Number 6,129,720 to

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Blenke et al. (*Blenke*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed previously, neither *Freeland* nor *Blenke*, alone or in combination, teach or suggest an outer surface of an outer layer in the front waist region that includes a fastener located laterally inward of each longitudinal side edge and adapted to engage into the elastic inner layer in the back waist region as required by Applicants' claim 22. Claims 22-27 and 29-42 depend from claim 22 and are patentably distinct over the combination of *Freeland* and *Blenke* for at least the same reason as claim 22. Therefore, the rejection of these claims should be withdrawn.

By way of the Office Action mailed 07/12/2005, claims 7 and 49 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 4,990,147 to *Freeland* (*Freeland*) in view of U.S. Patent Number 5,957,907 to *Sauer* (hereinafter *Sauer*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed previously, *Freeland* fails to teach or suggest an outer surface of an outer layer in the front waist region that includes a fastener adapted to engage into the elastic inner layer in the back waist region as required by Applicants' claims 1 and 43. *Sauer* includes a pair of fasteners 50 which are employed to secure the diaper 20 about the waist of a wearer. (col. 4, ll. 38-39). However, *Sauer* does not teach an outer surface of an outer layer in the front waist region that includes a fastener adapted to engage into the elastic inner layer in the back waist region. Therefore, the additional of *Sauer* does not cure the defects of *Freeland* alone and the combined prior art references fail to teach or suggest all the claim limitations. Claims 7 and 49 depend from claims 1 and 43 and are patentably distinct over the combination of *Freeland* and *Sauer* for at least the same reason as claims 1 and 43 discussed above. Therefore, the rejection of these claims should be withdrawn.

Examiner Hill has objected to the drawings for allegedly failing to show every feature of the invention specified in the claims. Specifically, Examiner Hill states

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that the 'inner and outer surface' of the outer layer of claim 1 and the 'pleats' of claim 7 must be shown or the features canceled from the claims.

Applicants respectfully direct the Examiner's attention to at least Figure 6 which illustrates both the inner and outer surface of the outer layer 80 as well as two pleats in outer layer 80. The objection to the drawings should be withdrawn.


For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920)721-3016.

Respectfully submitted,

PAUL T. VAN GOMPEL ET AL.

By: 

David J. Arterian

Registration No.: 44,512

Attorney for Applicant(s)